

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eighteenth day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.11802 of 2018

IN CRL A.233/2018

A.MANOKARAN,

[PETITIONER/APPELLANT]

Vs

THE STATE BY INSPECTOR OF [RESPONDENT]
POLICE, VIGILANCE & ANTI CORRUPTION,
NAMAKKAL,
CR.NO.10/AC/2004,
NAMAKKAL DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.NO.233 of 2018 on the file of the High Court, the High Court will be pleased to Stay the order of conviction imposed in the judgment dated 16.03.2018 made in Special C.C.No.14 of 2005 on the file learned Special Judge/Chief Judicial Magistrate, Namakkal pending disposal of the above Criminal Appeal 233 of 2018 before this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and Memorandum of Grounds in Crl.A.NO.233 of 2018 On the file of the High Court and upon hearing the arguments of M/S.N.MANOKARAN, Advocate for the petitioner AND OF MR.K.PRABAKAR, ADDL. PUBLIC PROSECUTOR (V & AC) CASES, for the Respondent, the court made the following order:-

The petition has been filed by the petitioner to stay the order of conviction imposed in the judgement dated 16.03.2018 made in Spl.C.C.No.14 of 2005 by the learned Special Judge/Chief Judicial Magistrate, Namakkal pending disposal of the above criminal appeal.

2. The learned counsel for the petitioner would submit that the petitioner, by a judgement dated 16.03.2018 in Special C.C.No.14 of 2005 has been convicted and sentenced to undergo S.I for three years each and to pay a fine of Rs.2500/- each in default to undergo one month S.I each for the offences under Sections 7 and 13(2) and 13(1) (d) of the Prevention of Corruption Act and against the judgement and sentence, he has filed the appeal in Crl.A.No.233 of 2018 and this Court, by an order dated 09.04.2018 in Crl.M.P.No.5647 of 2018 had suspended the substantive sentence of imprisonment alone. He would further submit that there are apparent variations in the evidence of PW2 and PW3, thereby falsifying the version of the prosecution and

would submit that no credible evidence has been let in by the prosecution to prove the charges against the petitioner and thereby, the prosecution has failed to prove the case beyond reasonable doubt. In such circumstances, there is every possibility of the appeal being allowed and would submit that the grounds of appeal would lend support for the prayer for stay of conviction. He would further submit that the petitioner was initially placed under suspension on 25.10.2004 and later, the order of suspension was set aside by the order of this Court in W.P.No.29579 of 2008 dated 17.08.2009 and thereafter, the petitioner was reinstated in service and that he continued to be in service till date. The learned counsel for the petitioner would submit that consequent to the conviction, the District Revenue Officer, Namakkal had issued a memo in R.C.No.4362/2011/A3 dated 28.07.2018 directing the petitioner to show-cause why he should not be dismissed from service as per Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. He would submit that the District Revenue Officer, Namakkal had decided to dismiss the petitioner from service without any enquiry in view of the conviction imposed in the judgement dated 16.03.2018. He would submit that though the petitioner has obtained the benefit of suspension of sentence, the authority is not inclined to consider the said order and there is every chance that he would be removed from the service. The learned counsel for the petitioner would submit that the petitioner was appointed on 25.09.1995 as Revenue Inspector and he has rendered meritorious service for the past 35 years and he has 4 more years to retire and he is living with his wife and two unmarried daughters and he would further submit that in the event of dismissal from service, the petitioner will be put to untold sufferings and hardship and would submit that Section 389(1) of Cr.P.C confers powers not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against. In support of his contention, the learned counsel would rely on the judgement of the Apex Court reported in **Rama Narang Vs. Ramesh Narang (1995 (2) SCC 153)** and also the judgement reported in **Navjot Singh Sidhu Vs. State of Punjab (2007 (2) SCC 574)** and would seek for stay of operation of the judgement.

3. The learned Additional Public Prosecutor would submit that the petitioner has been found guilty for the offences under Section 7 and 13(2), 13(1)(d) of Prevention of Corruption Act and the case of the prosecution is that the petitioner demanded and accepted Rs.1000/- as illegal gratification from PW2 and that the prosecution has proved its case beyond reasonable doubt and thereby, the trial Court had found him guilty. He would further submit that the Hon'ble Apex Court had held though Section 389(1) of Cr.P.C confers powers to suspend the operation of the order of conviction, the powers of court to suspend the conviction can be exercised in exceptional circumstances. He would further submit that the Hon'ble Apex Court has held that suspension of conviction of public servant convicted for corruption charges, on the ground that he would otherwise lose his employment is impermissible and he would submit that in the event of the appeal being allowed, there is every chance that he may be reinstated in service. He would submit that the petitioner has not shown any exceptional circumstances warranting stay of conviction and thereby

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would submit that the petition has to be dismissed.

4. Now, what is to be seen is whether the petitioner has shown any exceptional circumstances legally and factually warranting stay of conviction.

5. In the judgement of the three Judges bench of the Apex Court reported in **(1995) 2 SCC 513 (Rama Narang v. Ramesh Narang & others)** in respect of a conviction resulting in some disqualification under the Companies Act, the Apex Court had held that in a fit case if the High Court feels satisfied that the damage suffered by the appellant cannot be undone at a subsequent date if the conviction is set aside, the High Court may stay the order of conviction, however the High Court must examine the pros and cons of the case.

6. In **Navjot Singh Sidhu v. State of Punjab and another reported in (2007) 2 SCC 574**, the Apex Court had held that grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case. The facts in this case refers to conviction suffered by the appellant for an offence under Section 304 (ii) of IPC in the appeal against acquittal filed by the State and the consequent disqualification under the Representation of the People Act 1951.

7. The learned counsel for the petitioner while referring to the above judgements had conveniently avoided referring to the later judgements by the Apex Court regarding this issue.

8. It is apposite to refer to the following later judgements of the Hon'ble Apex Court regarding the issue of staying the order of conviction pending appeal.

- 1) **2012 (12) SCC 384**
State of Maharashtra v. Balabushia Dattatrya Khumba
- 2) **2012(12) SCC 390**
CBI, New Delhi v. Roshanlal Saini
- 3) **2014(8) SCC 909**
Shyam Narain Pandey v. State of Uttar Pradesh

9. In **2012(12) SCC 384 and 2012(12) SCC 390** the Hon'ble Apex Court referring to **(1995) 2 SCC 513 (Rama Narang v. Ramesh Narang and others)** and various other judgements has held that suspension of conviction of public servant convicted for corruption charges, on the ground that he would otherwise lose his employment is impermissible.

10. Further, in **(2014) 8 SCC 909**, the Apex Court had held that loss of public employment/promotion prospects are not at all relevant consideration for staying the order of conviction and also held that where offences involve moral turpitude, staying of conviction in such cases would have serious impact on public perception on integrity of judicial institution and would shake public confidence in judiciary.

11. From the above judgements, it is made clear that the stay of conviction can be granted in rare and exceptional cases where the appellant suffers irreparable injury coupled with irreversible consequences resulting in injustice and that the stay of conviction cannot be granted in cases of conviction of public servants convicted for corruption charges and further it had been made clear that the ground of loss of public employment and promotion prospects are not at all relevant considerations for stay of conviction.

12. Now coming to the case on hand, the petitioner has been convicted for offences under the provisions of the Prevention of Corruption Act for having taking illegal gratification and the ground on which the prayer for stay of conviction has been sought for is loss of employment. The prayer of the petitioner fails on both grounds. Further, no exceptional case has been made out by the petitioner warranting stay of conviction.

13. The petition lacks merits and is liable to be dismissed. Accordingly, the criminal miscellaneous petition is dismissed.

-sd/-

18/09/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE/CHIEF
JUDICIAL MAGISTRATE, NAMAKKAL.

2 THE ADDL. PUBLIC PROSECUTOR,
(V & AC) CASES, HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VIGILANCE & ANTI CORRUPTION,
NAMAKKAL, NAMAKKAL DISTRICT.

+1 C.C. to M/S.N.MANOKARAN Advocate on payment of necessary charges-Sr.17739

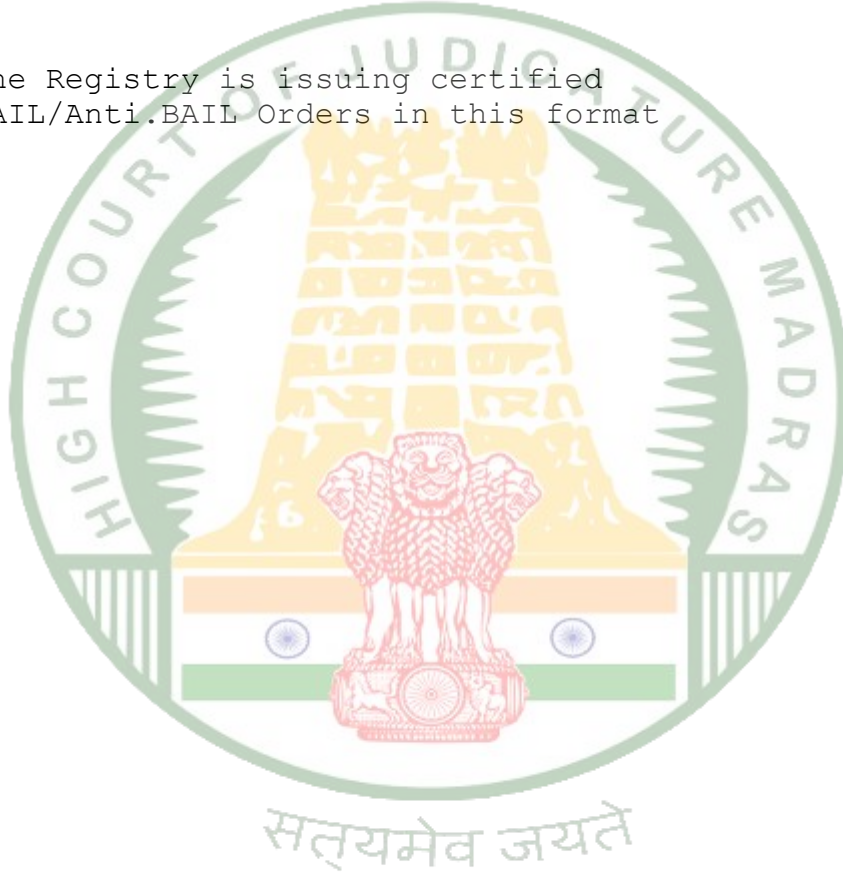
Order

in
CRL MP.11802/2018

in
CRL A.233/2018

Date :18/09/2018

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